

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CASE NO. 3:21-cv-00173-MOC-DCK**

TRAVELERS CASUALTY AND SURETY  
COMPANY OF AMERICA,

Plaintiff,

v.

JELD-WEN HOLDING, INC.; et al.,

Defendants.

JELD-WEN HOLDING, INC.,

Third-Party Plaintiff,

v.

OLD REPUBLIC INSURANCE COMPANY,

Third-Party Defendant.

**MOTION FOR SUMMARY JUDGMENT AGAINST  
TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA BY  
DEFENDANTS MARK A. BECK, L. BROOKS MALLARD, KIRK S. HACHIGIAN,  
GARY S. MICHEL, AND JELD-WEN HOLDING, INC.**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, and Local Rule 7.1, Defendants Mark A. Beck, L. Brooks Mallard, Kirk S. Hachigian, Gary S. Michel, and JELD-WEN Holding, Inc. (“JW Holding”) respectfully move the Court for an order granting them summary judgment on their First Claim for Relief (Counterclaim for Breach of Contract) and Second Claim for Relief (Counterclaim for Declaratory Judgment) against Plaintiff Travelers Casualty and Surety Company of America (“Travelers”), finding that Travelers has a duty to indemnify Defendants in the amount of its full \$10,000,000 policy limits against an underlying settlement, and dismissing Travelers’ Complaint as a result. In support of the Motion, Defendants respectfully show the Court the following:

1. Although this Motion is filed by less than all Defendants, it nonetheless resolves this case in its entirety because a ruling in movants’ favor will exhaust the limits of Travelers’ policy, rendering moot any further dispute between Defendants and Travelers, and likewise rendering moot Defendant JW Holding’s Third-Party Complaint against Old Republic Insurance Company.

2. Any decision in favor of Travelers, however, will not dispose of the case as to Travelers. Defendants have asserted waiver and/or estoppel in their Seventh Affirmative Defense. Given the passage of time between notice of the subject underlying liability claim to Travelers and Travelers’ untimely denial of coverage for it on the virtual eve of mediation in the underlying liability matter, Travelers either waived its coverage defenses or is estopped from asserting them. This affirmative defense would require discovery.

3. In further support of this Motion, movants submit the accompanying Brief in Support of Motion for Summary Judgment and the Declaration of Kelly Beegle.

WHEREFORE, based on the foregoing, Defendants, Mark A. Beck, L. Brooks Mallard, Kirk S. Hachigian, Gary S. Michel, and JW Holding pray that the Court enter summary judgment in their favor on their First Claim for Relief (Counterclaim for Breach of Contract) and Second Claim for Relief (Counterclaim for Declaratory Judgment) against Travelers and dismiss Travelers' Complaint accordingly.

DATED this 17th day of December 2021.

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